

## § 48.4081-8

## 26 CFR Ch. I (4-1-09 Edition)

under § 48.4081-2(c)(1). C pays this tax to the government.

(iii) After C has filed a return of the second tax and before the end of the period prescribed by section 6511 for filing a claim for a refund, C files a claim for a refund of the second tax. The claim is in the form prescribed in paragraph (d)(2) of this section. C includes with its claim a copy of the first taxpayer's report and statement of subsequent seller. Because the conditions to allowance of a refund under paragraph (b) of this section have been met, C is allowed a refund of the second tax.

*Example 2.* The facts are the same as in *Example 1* except that A does not pay the tax to the government. Because the first tax was not paid to the government as required by paragraph (b)(1) of this section, the conditions to allowance of a refund under paragraph (b) of this section have not been met. Therefore, C is not allowed a refund of the second tax.

(g) *Effective date.* This section is effective in the case of taxable fuel with respect to which the first tax is imposed after September 30, 1995.

[T.D. 8421, 57 FR 32424, July 22, 1992, as amended by T.D. 8609, 60 FR 40086, Aug. 7, 1995; T.D. 8659, 61 FR 10457, Mar. 14, 1996; T.D. 8879, 65 FR 17157, Mar. 31, 2000]

### § 48.4081-8 Taxable fuel; measurement.

(a) *In general.* Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit.

(b) *Effective date.* This section is applicable January 1, 1994.

[66 FR 27597, May 18, 2001]

### § 48.4082-1 Diesel fuel and kerosene; exemption for dyed fuel.

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel or kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel or kerosene satisfies the dyeing and marking requirements of paragraphs (b), (c), and (d) of this section.

(b) *Dyeing requirements.* Diesel fuel or kerosene satisfies the dyeing requirement of this paragraph (b) only if the diesel fuel or kerosene contains—

(1) The dye Solvent Red 164 (and no other dye) at a concentration spec-

trally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel or kerosene; or

(2) Any dye of a type and in a concentration that has been approved by the Commissioner.

(c) *Marking requirements.* [Reserved]

(d) [Reserved]. For further guidance, see § 48.4082-1T(d).

(e) *Effective date*—(1) Except as provided in paragraph (e)(2) of this section, this section is applicable March 14, 1996.

(2) [Reserved]. For further guidance, see § 48.4082-1T(e)(2).

[T.D. 8659, 61 FR 10457, Mar. 14, 1996, as amended by T.D. 8879, 65 FR 17157, Mar. 31, 2000; T.D. 9199, 70 FR 21333, Apr. 26, 2005]

### § 48.4082-1T Diesel fuel and kerosene; exemption for dyed fuel (temporary).

(a) through (c) [Reserved]. For further guidance, see § 48.4082-1(a) through (c).

(d) *Time and method for adding dye*—

(1) *In general.* Except as provided by paragraph (d)(6) of this section, diesel fuel or kerosene satisfies the dyeing requirements of this paragraph (d) only if the dye required by § 48.4082-1(b) is combined with the diesel fuel or kerosene by means of a mechanical injection system that is approved by the Commissioner for use at the facility where the dyeing occurs. Application for approval must be made in the form and manner required by the Commissioner. Rules similar to the rules of § 48.4101-1(g) apply to the Commissioner's action on the applications.

(2) *Mechanical injection system; requirements.* The Commissioner will approve a mechanical injection system only if—

(i) The system has features that automatically inject an amount of dye that satisfies the concentration requirements of § 48.4082-1(b) into diesel fuel or kerosene as the diesel fuel or kerosene is delivered from the bulk transfer/terminal system into the transport compartment of a truck, trailer, railroad car, or other means of nonbulk transfer;

(ii) The system has calibrated devices that accurately measure and record the amount of dye and the amount of diesel

fuel and kerosene that is dispensed for each removal;

(iii) The system has automatic shut-off devices that prevent the removal of more than 100 gallons of undyed diesel fuel or kerosene in the case of a system malfunction;

(iv) The system is secured by either—

(A) Unbroken seals that are issued, installed, and maintained by the terminal operator and secure the measurement devices, shut-off devices, and other access points to the injection system; or

(B) A secured container that controls access to the measurement devices, shut-off devices, and other access points and is secured by an unbroken seal issued, installed, and maintained by the terminal operator;

(v) Each seal securing the system bears a unique identifying number or code and is produced in a manner that provides adequate assurance against duplication; and

(vi) The operator of the facility has written procedures in place for complying with its duty, described in paragraph (d)(4) of this section, to maintain the system's security standards.

(3) *Mechanical injection system; basis for approval.* In determining whether to approve a mechanical injection system, the Commissioner will take into account the individual circumstances of each facility, including local fire and safety codes, to ensure that the cost of acquiring and maintaining the appropriate levels of security are reasonable for that facility.

(4) *Mechanical injection system; duty of the operator of a mechanical injection system to maintain the system's security standards.* Each operator of a mechanical injection system must—

(i) Maintain a record for each seal, including its identifying number or code, the location of the seal, the date(s) on which the seal was issued and installed, and the reason for the installation;

(ii) Visually inspect each installed seal not less than once during every 24 hour period to ascertain that each seal and lock mechanism, if applicable, has not been physically altered;

(iii) Check the identifying number or code for each seal against the records maintained by the terminal operator

no less frequently than once during each seven day period and record each inspection and verification;

(iv) Promptly notify the Commissioner if inspection of a seal reveals any inconsistency in the records pertaining to that seal, or if the seal has been damaged or removed (other than a removal authorized by the operator for testing or maintenance);

(v) Maintain a record of each seal that has been replaced to include the seal number or code, the date the seal was issued, the location of the seal, the date the seal was replaced, and the reason the seal was replaced;

(vi) Promptly destroy and replace seals that have been removed from the system;

(vii) Restrict access to unused seal inventory to individuals specifically designated by the operator and maintain a record of such individuals;

(viii) Maintain a record of each installation, inspection, and destruction described in this paragraph (d)(4), including the name of the individual who conducts the installation, inspection, or destruction;

(ix) Make available for the Commissioner's immediate inspection the seals and records described in this paragraph (d)(4); and

(x) Promptly notify the Commissioner if, and when, the dye injection system is placed out of service.

(5) *Mechanical injection system; revocation or suspension of approval.* The Commissioner may revoke or suspend its approval of a dye injection system if the Commissioner determines that the system does not meet the standards of paragraph (d)(2) of this section or if the operator of the system has not complied with the requirements of paragraph (d)(4) of this section.

(6) *Sales and entries.* For purposes of determining whether tax is imposed by section 4081 on a sale or entry of diesel fuel or kerosene, such fuel satisfies the dyeing requirements of this paragraph (d) only if the dye required by § 48.4082-1(b) is combined with the fuel before the sale or entry and the seller or enterer has in its records evidence (such as a certificate from the terminal operator providing the fuel) establishing that the dye was combined with

## § 48.4082-2

the fuel by means of a mechanical injection system. Thus, for example, diesel fuel or kerosene that is entered into the United States by means of nonbulk transfer (such as a railroad car) does not satisfy the requirements of this paragraph (d) if the required dye and marker are combined with diesel fuel or kerosene after the diesel fuel or kerosene has been entered into the United States.

(7) *Cross reference.* For the penalty relating to mechanical dye injection systems, see section 6715A.

(e) and (e)(1) [Reserved]. For further guidance, see § 48.4082-1(e) and (e)(1).

(2) This section is applicable on October 24, 2005.

[T.D. 9199, 70 FR 21333, Apr. 26, 2005]

## § 48.4082-2 Diesel fuel and kerosene; notice required for dyed fuel.

(a) *In general.* A legible and conspicuous notice stating “*DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*” must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. A legible and conspicuous notice stating “*DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*” must be posted by a seller on any retail pump or other delivery facility where it sells dyed kerosene for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed fuel is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Cross reference; terminal operators.* For the requirement that terminal operators provide a notice with respect to dyed fuel, see § 48.4101-1(h)(3) (relating to terms and conditions of registration for terminal operators).

(c) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, and with respect to kerosene after June 30, 1998.

[T.D. 8879, 65 FR 17157, Mar. 31, 2000]

## 26 CFR Ch. I (4-1-09 Edition)

### § 48.4082-3 Diesel fuel and kerosene; visual inspection devices. [Reserved]

### § 48.4082-4 Diesel fuel and kerosene; back-up tax.

(a) *Imposition of tax—(1) In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) *Liability for tax—(i) In general.* The operator of the highway vehicle into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel and kerosene; buses and trains—(1) In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

(2) *Liability for tax—(i) In general.* Except as provided in paragraph (b)(2)(ii) of this section, the operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(ii) *Special rule for certain train operators.* The person that delivers the fuel into the fuel supply tank of a train, rather than the train operator, is liable